



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO E094 OF 2025

JUDY MAKENA RIUNGU

.....PLAINTIFF/APPLICANT

VERSUS

JAMES ONSARE MATOKE1ST DEFENDANT/

RESPONDENT

EQUITY BANK LIMITED.....2ND DEFENDANT/

RESPONDENT

MBULI AUCTIONEERS.....3RD DEFENDANT/

RESPONDENT

RULING

1. Before this Court is the Defendant's **Preliminary Objection** dated **7th August 2025** challenging the jurisdiction of this Court to entertain the present suit. The Defendant argues that disputes arising from realization of securities and statutory power of sale fall within the jurisdiction of the High

Court and not the Environment and Land Court. The Defendant contends that the dispute herein concerns a charge instrument, recovery of debt, and exercise of statutory power of sale and therefore this Court lacks jurisdiction.

2. The Plaintiff opposes the objection and argues that the dispute transcends a mere commercial lending relationship and substantially concerns ownership interests in land, validity of the sale process, infringement of co-proprietary rights, want of statutory notices to co-owners, and legality of transfer of title.
3. The Plaintiff therefore maintains that the dispute falls squarely within **Article 162(2)(b)** of the **Constitution and Section 13** of the **Environment and Land Court Act**.
4. The Defendant argues that the suit concerns realization of a security arising from a charge instrument which arises from a banker-customer relationship and enforcement of contractual obligations. That pursuant to the holding in the **Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 Others** case, jurisdiction lies with the High

Court and not the Environment and Land Court. That consequently this Court lacks jurisdiction *ab initio*.

The sole issue for determination is whether this Court lacks jurisdiction to hear and determine the dispute herein. The locus classicus case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** settled that a preliminary objection must raise a pure point of law. This position has been buttressed severally including by the Supreme Court in **Odinga v Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR)**.

5. As has often been held, the question of jurisdiction is central to the legitimacy of any orders that a court makes hence must be determined at the earliest opportunity once raised. I reiterate the often cited words in the famous case of **“Owners of Motor Vessel “Lilian S” - Versus - Caltex Oil (Kenya) Limited (1989) IKLR** in which the court stated:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis

for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction..... where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

6. The Environment and Land Court is a creation of **Article 162 (b) of the Constitution** which donates to parliament the power to establish courts with the status of the High Court to hear and determine disputes relating to the Environment and the use and occupation of and title, to land.

7. The **Environment and Land Court Act at section 13** defines the jurisdiction of the court thus;

(1 The Court shall have original and appellate jurisdiction) to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in

Kenya relating to environment and land.

(2 In exercise of its jurisdiction under Article 162(2)(b) of) the Constitution, the Court shall have power to hear and determine disputes—

(a relating to environmental planning and protection,) climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b relating to compulsory acquisition of land;)

(c relating to land administration and management;)

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e any other dispute relating to) environment and land.

8. Courts continue to grapple with the question of jurisdiction of the Environment and Land Court vis a vis the High Court. Joel

Ngugi J (as he then was) weighed in on the use of the predominant purpose test thus ***“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.*”**

24. The Court must first determine whether the predominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.”

9. The learned Judge noted that the pleadings provide useful guidance on what the predominant purpose is. The Court is therefore obligated not merely to examine the label of the dispute but its true substance. In the oft quoted case of **Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 Others**, the Court of Appeal held that a charge is essentially a security instrument and that disputes purely concerning accounts, indebtedness, and realization of securities are outside the jurisdiction of the ELC.

10. However, the decision cannot be read in isolation or interpreted as completely divesting the ELC of jurisdiction whenever charged land is involved. In the present case, the pleadings disclose allegations that the suit property is co-owned; that mandatory statutory notices were not issued to all co-proprietors; it is therefore contended that the impugned sale violated proprietary interests in land for which the Plaintiff seeks declarations touching on validity of title and sale.

11. These are not merely questions of debt recovery or accounts. There are issues of the legality of alienation of

proprietary interests in land and the validity of transfer of title arising from the impugned exercise of statutory power of sale. These issues fall squarely within the jurisdiction of the Environment and Land Court as conferred by **Article 162(2)(b) of the Constitution and Section 13 of the ELC Act.**

12. This distinguishes the matter from the **Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 Others** decision which revolved around accounts, indebtedness, and realization of a security instrument.

13. This Court therefore finds that the dispute is predominantly a land dispute regarding the use of co-owned property. The court will have to delve into issues of title and interests in land. Accordingly, the Court finds that the dispute herein substantially concerns interests in land, use of co-owned property, legality of transfer of title, and alleged violation of statutory safeguards under the Land Act. The matter therefore falls within the jurisdiction of the Environment and Land Court under **Article 162(2)(b) of**

the Constitution and Section 13 of the Environment and Land Court Act.

14. The **Preliminary Objection** is thus dismissed with costs to abide the outcome of the main suit.

Dated, Signed and Delivered virtually at Kajiado this 7th day of May 2026.

JUDY OMANGE

JUDGE

In presence of

Mr Mukonyi for the Plaintiff.

Court Assistant - Peter.